In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1008

J. R. McDONALD, J. R. MASON and MARY E. MORRIS,
Petitioners,

vs.

BANTA CARBONA IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.
and
BRIEF IN SUPPORT THEREOF.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioners above named respectfully pray that a writ of certiorari issue to review the judgment entered December 4, 1941 against them by the United States Circuit Court of Appeals for the Ninth Circuit. (R.

389.) The judgment affirmed a decree of the United States District Court for the Northern District of California, Southern Division, dated January 6, 1940, which confirmed a plan of composition of the bonded indebtedness of respondent, Banta Carbona Irrigation District. (R. 108 to 128.) Petition for rehearing was not filed.

Respondent is a California irrigation district or taxing agency, within Section 83 of the Bankruptcy Act. (R. 2.) The proceeding was under that section.

11 U. S. C. A., Section 403;
50 Stats. at L. 653, Chap. 657.

Petitioners hold $36,000.00 in bonds of the District with all interest coupons representing interest accruing after July 1, 1932. (Their claims, R. 84 to 98; testimony as to ownership, R. 234 and 235.) These bonds are affected by the plan of composition. Counting principal and interest, petitioners' loss is over $20,000.00.

The points relied on were both pleaded (R. 35, Par. XIV; R. 45, end of Par. XXII; R. 39, Par. XVII and R. 75, Par. IX and R. 82, Par. XIX) and set out in the statement of points required to be filed by the rules for the Ninth Circuit.

> Point 11 recites (R. 366) that there is no proof that the value of what the plan of composition offered to the appellants equalled what was offered to the principal bondholders, the Reconstruction Finance Corporation (hereinafter called the R.F.C.) and the point recited that the plan discriminated in favor of the R.F.C.

Point 13 explained (R. 366) that the plan proceeded under the theory that the R.F.C. was a bondholder which had consented to the plan, etc.

Point 6 declared (R. 365) that the R.F.C. was not in fact the owner of bonds of the District and was not qualified to give the consent upon which the enforcement of the plan depended.

(The points were stated in this way so as to compel the adoption of one theory or the other with respect to the status of the R.F.C. If, under the arrangement between the R.F.C. and the District, the R.F.C. was to be treated as an owner of the bonds which it held, it became necessary to see that the plan did not accord rights to the R.F.C. which were not accorded to the dissenting bondholders.)

Our contention is that the R.F.C. was found to be such an owner and that it was not under the ruling of the Supreme Court in the *City of Avon Park* case (311 U. S. 138) herein mentioned and of the Circuit Court of Appeals in *Kauffman County Levee Imp. Dist. No. 4 v. Mitchell,* 116 Fed. (2d) 959, qualified to give a consent to a plan of composition which accorded rights to it which were different from those accorded to dissenting bondholders and that the plan was discriminatory and unfair.

SUMMARY STATEMENT OF THE CASE.

The composition petition was filed by the Irrigation District on January 9, 1939. (R. 1 to 29.)

As shown by the petition (R. 1 to 29), the indebtedness involved comprised bonded indebtedness of $1,134,060.00 and warrant indebtedness of $56,895.93 together with interest thereon from July 1, 1932. On December 21, 1938, the unpaid bond interest was $528,853.37 and the unpaid warrant interest was $21,656.23. (R. 12.)

The petition alleges (R. 4) that the District can not meet these debts. We are not inflicting on this Court a review of the evidence as to bankruptcy. We shall point out that the new bonds of the District provide an equity in security of 40%.

The petition alleges that the Reconstruction Finance Corporation owns and holds over 90% of these bonds and warrants and has consented to the District's plan of composition. (R. 5.) The written consent of said corporation to the plan is attached to the petition. (R. 19 to 24.)

(Note that the petition says not one word about compromising any existing loan made to the District by the R.F.C. Yet there was such a loan and it was payable like other debts of the District. Section 83 says that debts of a District payable from the same source are on a par. As will appear, no reference was made in the petition to the "loan" because it was to be settled by compromising the "security" for the "loan", to-wit, bonds and warrants held by the R.F.C. at a figure in new bonds equal to the "loan", and this was

satisfactory to the lender, the R.F.C. A bondholder is of course a lender.)

As will appear, the District's plan provides for the paying to the dissenting bondholders, the petitioners herein, 61 per cent of the principal of their bonds, while at the same time the plan gives to the R.F.C. on account of its interest in the bonds and warrants which it held, 4 per cent tax-free bonds of the District. And for its contribution to a 61 per cent payment to be made for the forced surrender of petitioners' bonds it is to get a like settlement. And there was no proof that the rights so accorded were the same in value. They were legally different.

As will be hereinafter observed, the R.F.C. had before the petition was filed entered into a loan arrangement with the District whereby it advanced funds which, together with certain funds of the District, were used in buying up bonds and warrants of the District in the name of the R.F.C. The arrangement required the passing of the title to the old securities to the R.F.C. and that they should remain in effect to the extent the R.F.C. elected, so that a dissenting bondholder would not be in a position to urge that such taking up of the securities at a discount had freed the District of its bankruptcy. The agreement further stated that the R.F.C. could give any assent necessary to subject all the securities to a bankruptcy plan of composition. It also provided that the R.F.C. should receive interest at 4% per annum on these advances.

As we have indicated, the petition did not state the debt it desired to adjust was but the smaller debt

arising from the advances. Under state law the R.F.C. could not so contract with the District as to make it a creditor for both advances and the old securities jointly purchased. However, the advancing contract which is possibly sustainable in such a situation did provide that the sale of the old securities to the advancer of funds would not settle or discharge them. Somewhat similar arrangements had been previously sustained in handling claims against financially embarrassed concerns. But when the friendly creditor here went into a Bankruptcy Court it could not have its interest in the purchased claims settled on one basis and the claim of a dissenting creditor settled on another basis.

It is elementary that a pledge by a debtor of his own unsecured obligation to secure his debt can not as against his other creditors increase his debts. The rule does not apply to the security that is behind the second debt. The provision for holding the purchased securities in force was to avoid the danger of the rule mentioned. The general rule is well settled. See

Jones v. Sedalia Third Nat. Bank, 13 Fed. (2d) 86,

which case reviewed the authorities.

As the District became liable to the R.F.C. for the latter's advances made to procure the old securities and had to pay interest on such advances, it at least may not be said that if the R.F.C. elected to enforce or settle through bankruptcy or otherwise the old securities which were greater in amount it could also collect the debt for the advances, the whole of the

debts being on a parity. An ordinary debt or a warrant or a bond or a judgment against an irrigation district is collected by causing a tax levy. This is provided in Section 39 of the California Irrigation District Act. And the Court will note that in the original R.F.C. loan resolution here involved the District was required to agree that it would annually levy enough to meet the maturities on the purchased securities but that with the consent of the R.F.C. this could be reduced to the 4 per cent per annum required for the R.F.C.'s advances. We quote:

> "(d) During the time any of the Old Securities are held by or on behalf of this Corporation, the Borrower will annually levy and collect taxes, assessments or other charges and cause the same to be paid over to this Corporation sufficient to pay the principal and interest upon the Old Securities according to their tenor and effect, but the Division Chief may reduce any installment thereof to an amount or amounts not less than may be necessary to pay principal and interest at the rate of 4% per annum on all amounts disbursed by this Corporation to or for the benefit of the Borrower; such payments to be made by the Borrower according to a schedule of maturities satisfactory to the Division Chief." (R. 259.)

The R.F.C. further treated the payment of interest on its advances as a partial payment of the 6 per cent interest called for by the bonds, for in sending in the first interest bill of January 1, 1939, it sent in for cancellation coupons in the same amount. (R. 360, 361.)

The vital question is:

If an Irrigation District agrees with a corporation that the corporation shall advance funds to buy up its bonds and warrants at a discount and that the District shall contribute a portion of the price and that title shall be taken by the corporation to the bonds and warrants purchased and that the District shall have *the privilege* of paying to the corporation *at a time not fixed,* the corporation's advances with interest at 4% per annum and of receiving the securities purchased and that if the "loan" is not paid the corporation shall have the *privilege at a time not fixed* of requiring the District to issue to it 4 per cent bonds of the District for the amount of its advances and that until the old securities bought up are surrendered, the corporation shall have the right to hold them at their full face amount so as to prevent according advantage to dissenting bondholders and that the corportaion shall, while holding the old securities, have the right to consent to a plan of composition of the old securities, is the corporation, under the case of *American United Mut. Life Ins. Co. v. Avon Park,* 311 U. S. 138, 85 L. ed. 91, qualified to consent to a plan of composition which compels the dissenting bondholders to receive cash for their bonds and accords to the corporation 4 per cent tax-free, or any other kind, of bonds of the District for its interest in the bonds and warrants which it holds and for such interest as it will have in the bonds required to be delivered up by dissenting bondholders for a cash

payment which will be the same in amount and which will be provided in manner followed in the purchase of the old securities? Without proof may such a plan be found to be fair and non-discriminatory?

The Court should bear in mind of course that the fact that the plan adopted arranged for issuance of 4 per cent bonds is but a circumstance that enables the other side to argue here that the R.F.C. was entitled to 4 per cent bonds because it had a contract that governed the surrender by it of the bonds which had been bought up. Legally our point is as sound as if the bonds issuable under the plan drew a greater rate of interest than 4 per cent.

The contract could not exclude the effect of bankruptcy. Adroit wording of the loan contract hardly creates a case of bankruptcy so far as dissenting bondholders are concerned and a case of quasi-specific performance so far as an assenting bondholder is concerned. A dissenting bondholder is entitled to what the assenter receives for his interest in the bonds in his hands. The *Avon Park* case shows that, however obscured, discrimination can not be allowed.

The R.F.C. received possession of nearly 90% of the bonds and Section 83 required a two-thirds consent to a plan. It thus had the District bound against any plan that did not suit it. But obviously the security of its position was not under Section 83 an excuse for getting more under the Court's decree, than was accorded to unsold bonds. Bigness of its holding and its governmental creation were immaterial. It

could not by contract compel filing a petition under Section 83 for the section covers voluntary bankruptcy only. The District and it could not contract jurisdiction out of the Court to require a nondiscriminatory plan. If the contemplated plan of the preliminary contract was unfair, in that it offered too little, it was the R.F.C.'s duty, particularly if it was more than a holder of security, to take more than the plan contemplated or at least to make a waiver of the excess and not try to say the stipulations of its preliminary agreement and not fairness determined the right of a dissenting bondholder.

State law permitted the District to make a contract with the R.F.C. to refund its debts, not to make a contract which would double them. It did not permit a contract that would have allowed the R.F.C. to foreclose on the bonds taken up for a nominal amount and then hold the District for the loan to the extent unpaid and for the amount of the old securities it might buy at the foreclosure sale. It of course took no new state law to permit a private bondholder to accept refunding bonds. A pledge of the debtor's own unsecured debt may give a slightly different remedy, but it is not a weapon for doubling a debt.

49 *Corpus Juris*, p. 903.

Stripped of confusion, this plan said to the dissenting bondholders: *The District is compromising securities. You must sell your bonds to the R.F.C. for 61 cents on the dollar contributed by the District and by the R.F.C.; that the R.F.C. must be treated as having title to all bonds on which it has made advances and*

as qualified to consent and to coerce you into consenting and that for its interest in the bonds it holds and in the bonds you surrender, it shall receive 4 per cent bonds of the District.

The petition makes the resolution of the District which adopted the plan an exhibit of the petition for the purpose of showing the plan of composition. (R. 10 to 18.)

The date of the resolution is December 21, 1938. (See the certification to resolution, R. 19.) (At this date the District and the R.F.C. had received most of the bonds through voluntary transfer.)

At pages 15 and 16 of the record, the resolution states that the District's plan discharges the aforesaid bond and warrant indebtedness by paying thereon 61 cents on each dollar of principal and that these payments are to be accomplished *by the District's* contributing $26,483.12 in cash and through a loan procured from the Reconstruction Finance Corporation amounting to $702,500.00 and that the R.F.C. shall receive 4 per cent bonds which will represent the loan. It is also stated that the R.F.C. is to receive interest at 4% on its advances until new bonds are issued. (R. 17 and 18.)

The reference to the $26,483.12 was in language of the future and it conveys a false impression. It was in no sense the intention to pay to the R.F.C. 2.224% of principal of the bonds and warrants which the R.F.C. had already obtained under the buy-up plan.

As we have suggested, the petition does not reveal that the R.F.C. has already advanced over $600,000.00. That debt is left out of the petition.

If we assume that the R.F.C. intended to hand to the District new money on getting the 4 per cent bonds and that the District was to hand this money back for the $600,000.00 indebtedness we have a form of settling a secured debt. However, it is obvious that one who holds a District's bonds as security in any form is entitled to no more under Section 83 for the bonds he holds than an owner. It would not make a difference insofar as our point is concerned if the petition claimed a secured debt and sought discharge of that. But if that had been alleged, there was possibly some danger in our contention that the District was not bankrupt, was already refinanced.

In fact, as will be shown in the attached brief, it was set out in the original loan arrangement that the R.F.C. would not have the right to receive all the new bonds as against a bondholder who was willing to stand in the same position as was taken by the R.F.C. and, as will be shown in said brief, it was formerly the position of present counsel for this District that the right to receive bonds should under a like loan contract made in the case of another District which they represented be accorded to dissenting bondholders exactly as it was to be accorded to the R.F.C.

As indicated, the petition shows that bonds and warrants to the extent of 90.3% of the whole have already been acquired by the R.F.C. (The resolution, R. 15.)

The District's contribution was 2.224 cents on the dollar or $22.24 per $1000.00 bond and the R.F.C.'s contribution was 58.776 cents on the dollar or $587.76 per $1000.00 bond.

Section 83 of the Bankruptcy Act required that at the time of the filing of the petition the plan should be consented to by creditors holding 51 per cent of the indebtedness involved. The District in fact pleaded that the R.F.C. "now owns and holds not less than 51 per cent, to-wit, more than 90 per cent" of the indebtedness that was to be subjected to the plan. (R. 5.)

The Court specifically found such ownership and that such "owner" had consented to the plan. (R. 103.)

The theory pleaded and found was one of ownership as against dissenting bondholders. We ask the benefit with the burden.

In advancing the 58.776 cents on the dollar the R.F.C. was given a right to call for 4 per cent bonds of the District equivalent to its advances as a condition of surrendering those bonds which passed into its hands *if the District did not pay up what the R.F.C. advanced.* No one disputes that. While times were not fixed, that was the contract. But the contract with its protective provision that permitted the R.F.C. to treat itself as owner is in a Bankruptcy Court and with the R.F.C.'s consent.

The plan enforced is shown precisely in paragraphs III and IV of the District Court's decree enforcing the plan. (R. 121 to 123.)

The petition pleads that the California Districts Securities Commission has approved the District's plan. (R. 6.)

On October 31, 1938, and when the R.F.C. was about to begin the advancing previously arranged, the District entered into a formal written contract to issue to the R.F.C. the 4 per cent bonds. (R. 287.) But here again time of delivery or acceptance was not fixed. The petition in bankruptcy had not been filed.

We go back to the original loan.

By a loan resolution of the R.F.C. dated *May 20, 1938* and set out in the transcript, the R.F.C. granted to the District a loan not to exceed $702,500.00 conditioned upon the District's getting consent of holders of 90% of the bonds and warrants of the District to accept 58.776% of the principal thereof. The loan resolution of the R.F.C. is set out in the transcript. (R. 245 to 271.)

The resolution did not prohibit the District from making a contribution to what the bondholder received.

This resolution made it clear that when 90% or more of debts involved called "old securities" were made available for settlement on a basis that would not require from the R.F.C. over $702,500.00 if all the bonds and warrants were bought up, the R.F.C. would begin advancing the 58.776% on each dollar of principal to anyone who would take that. (R. 248.)

It could refrain from advancing unless 90% of the old securities were made available. (R. 248.)

(In the brief, it will be pointed out that this 90% requirement could be made up in part under an alternative provision. The bonds of bondholders who simply assented to the refinancing were to be counted in the 90%. But really that is not essential to our case.)

Following the adoption of this loan resolution, the District solicited holders to turn over their bonds and warrants to a depository (Bank of America in San Francisco), with instructions to that depository to transfer the securities to the R.F.C. on payment of 61% of principal of these debts. The escrow instructions to be signed by the bondholders are set out in the record. (R. 355 to 359.)

Petitioner's Exhibit No. 13 shows the advances made by the R.F.C. up to June 12, 1939 (covering the period prior to and after filing of the petition) were as follows:

Nov. 29, 1938	$630,097.98
Dec. 5, 1938	2,241.95
Jan. 27, 1939	1,175.72
April 26, 1939	2,938.80
Total	$636,454.25

(R. 278.)

This conforms to the interest bill which the R.F.C. sent to the District. (R. 361.)

The oral testimony was that on November 29, 1938 on the day the R.F.C. made the large advance, the

District placed with Bank of America in San Francisco, the 2.224% of principal of the debts bought up and that the balance of the payment of 61 cents or 58.776% of the principal was put up by the R.F.C. (R. 153, 161.)

The resolution stated that if the District paid the R.F.C. its advances, it could have back the old securities but that even this would not discharge those securities. (R. 258 and 259.)

Again the R.F.C. might call for 4 per cent bonds equal to the amount of its advances. (R. 260.)

But times of performance were not fixed.

The loan resolution provided:

> "(g) In the event that the Borrower shall institute legal proceedings for the purpose of subjecting its outstanding Old Securities to a plan of refinancing, the Division Chief and Counsel *may* give such approval and consents that may be required to subject the Old Securities then held by or on behalf of this Corporation to any such plan which may be satisfactory to them and which will not result in the holders of any Old Securities receiving payments or benefits therefor in excess of what they would have received if such Old Securities had been voluntarily deposited as herein provided." (R. 261.)

We quote further:

> "Until such Old Securities have been exchanged for New Bonds, all such securities as well as all rights in or to the same shall continue to be and constitute obligations of the Borrower for the full

amount thereof and nothing in the Resolution shall be deemed to limit the right of this Corporation to enforce or cause to be enforced full payment of principal and interest of such Old Securities as when the Division Chief and Counsel shall deem it advisable to do so;" (R. 258.)

Thus the R.F.C. safeguarded against advantage to dissenting bondholders from the fact that the bonds were taken up at a discount.

The District accepted the resolution on June 8, 1938. (R. 271.)

We concede for the purpose of the case that the District stood menaced on January 1, 1939 with its entire bond debt and that as against petitioners the part of the debt bought up was "owned" by the R.F.C.

That is the theory of the case. But certainly the instant the R.F.C. said: We elect to vote our bonds; we select the bankruptcy remedy thereon, its rights therein were subject to Section 83.

THIS COURT HAS JURISDICTION.

Judicial Code, Section 240(a);
28 *U. S. C. A.,* Section 347(a);
Magnum Import Co. v. Coty, 262 U. S. 159, 43 S. Ct. 531, 67 L. ed. 922.

The brief will follow.

WHEREFORE, petitioners respectfully pray the writ of certiorari issue out of and under the seal of

this Honorable Court, directed to the Honorable Circuit Court of Appeals for the Ninth Circuit in San Francisco, requiring that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 9591 on its docket and entitled "J. R. McDonald, J. R. Mason and Mary E. Morris, Appellants v. Banta Carbona Irrigation District, Appellee" and that the said decree of said Court may be reversed by this Honorable Court and that your petitioners may have such other relief in the premises as to this Honorable Court may seem meet and just.

Dated, Berkeley, California,
February 27, 1942.

J. R. McDonald,
J. R. Mason,
Mary E. Morris,
Petitioners.

By W. Coburn Cook,
Attorney for Petitioners.

George Clark,
Of Counsel.

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No.

J. R. MCDONALD, J. R. MASON and MARY E. MORRIS,
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BANTA CARBONA IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Ninth Circuit appears in the record at R. 386. It is reported. See 123 Fed. (2d) 968. The *Merced District* case referred to in the decision appears in 114 Fed. (2d) 654.

No opinion was rendered by the District Court.

(NOTE): All italics throughout the brief are ours.

II.

STATEMENT OF THE CASE.

We have in the petition given an outline of the case with references and we have shown the points involved. Additional references will be made under the points argued.

III.

SPECIFICATIONS OF ERRORS.

As required by the rules of the Ninth Circuit statements of the points relied on were filed. These are set out on pages 364 to 371 of the record and they constitute errors that were relied on on the appeal.

They are mentioned and explained at pages 2 to 3 of the preceding petition and they are comprised in the points next set out.

IV.

THE RECONSTRUCTION FINANCE CORPORATION WAS NOT QUALIFIED TO GIVE THE TWO-THIRDS CONSENT TO THE IRRIGATION DISTRICT'S PLAN OF COMPOSITION, BECAUSE IT WAS AN INTEGRAL PART OF THE PLAN THAT IT SHOULD RECEIVE TAX FREE 4 PER CENT BONDS OF THE DISTRICT FOR THE INTEREST IN THE BONDS WHICH IT HELD AND WHICH IT VOTED AND THE PETITIONERS, DISSENTING BONDHOLDERS, WERE COMPELLED TO RECEIVE A CASH PAYMENT FOR THEIR BONDS AND TO TURN THEIR BONDS OVER TO THE R.F.C. AND PERMIT IT TO RECEIVE BONDS EVEN FOR THOSE BONDS. THE PLAN WAS NOT FAIR. IT DISCRIMINATES.

As already shown reliance is placed on the *City of Avon Park* case and Section 83 of the Bankruptcy Act,

and we point to an additional Circuit Court of Appeals ruling.

While it might be argued that the point here made was ruled upon by implication adversely to the bondholders in the cases referred to in the opinion of the Circuit Court of Appeals, because certiorari was denied in those cases, that is no excuse for the error and the making of one rule in this case and another in the *City of Avon Park* case. And we respectfully contend that if full effect is to be given to the *City of Avon Park* case this Court should declare that neither in an irrigation district or municipal bankruptcy case is it permissible to treat one creditor different from another in enforcing a plan of composition. In the *Merced* case the Circuit Court of Appeals said:

> "The obligation assumed by the R.F.C. was subject to the condition that all old securities should be purchased and held by R.F.C. until R.F.C. was satisfied the refinancing was complete. During this time the old securities were to be kept alive and outstanding. When the refinancing was complete, then and then only was the R.F.C. under the duty of buying and accepting refunding bonds and surrendering old securities for cancellation."
>
> *West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114 Fed. (2d) 654, 677.

It would seem clear that the statement is (a) not founded on fact and (b) that it disregards the legal situation which arose, the instant the R.F.C. elected to enter the Bankruptcy Court and agree in writing

to a plan affecting the bonds it held. When the R.F.C. elected as to bankruptcy and became a creditor entitled to file its claim, any contract that said it *must* for its claim have bonds ceased to be effective. All the bonds became subject to the rule of fairness and to a uniform nondiscriminatory plan. The District had no right to get petitioners' bonds for cash and for conversion into bonds for the benefit of the R.F.C. We were entitled to the new tax free 4 per cent bonds if the R.F.C. was so entitled. It is nice in these times to get as an entirety the whole issue of these bonds representing a reduction of a rich District's debt—by more than half when principal and interest is counted—but where is the sanction in law for what occurred here? Who paid a true price for the bonds of this District? These bonds are tax free and they are perfectly secured.

First let us state that the original loan resolution of May 28, 1938 specifically provided that the R.F.C. was not to advance a penny to any bondholder who said he was willing to subject his bonds to the rights accorded to the R.F.C. *and that such was the loan contract that was voted by the District and to have a loan at all from the R.F.C. required a vote of the District.* (The point was not clearly dealt with in the *Merced* case or in the other cases; nor was the *City of Avon Park* case considered at all in those cases.) The provision of the loan resolution of May 20, 1938 was that the loan of $702,500.00 should be scaled if bondholders Tom, Dick or Harry said they would take what the R.F.C. was to get. It was never agreed the

R.F.C. must have all the new bond issue. We quote from the original R.F.C. loan resolution:

> "(f) When any of the Old Securities are not deposited as herein provided but such Old Securities *are nevertheless subjected to the refinancing plan herein contemplated and the obligation of the Borrower evidenced by such non-deposited securities is thereby reduced in the same ratio and to the same extent as would have been the case if such non-deposited securities had been deposited, this Corporation shall be under no obligation to make any disbursements for the purpose of taking up or refinancing any of such non-deposited securities,* but if they have been so subjected to the refinancing plan within such time as may be fixed or approved by the Division Chief prior to the date fixed in paragraph 1 of the Resolution, or such extended date as may be fixed by this Corporation as therein provided, they shall be added to the amount of Old Securities deposited for the purpose of determining the percentage of deposited Old Securities upon which disbursement shall be made." (R. 254.)

How in the name of common sense could the obligation of the borrower be merely reduced except by refunding?

Language could not be clearer. If holders of 80% of the old securities said: We agree to the plan of refinancing, there was not so much as a shadow of a provision in the resolution from beginning to end that said the R.F.C. must have all the new bonds or nothing. It was not to pay out a penny on the 80%.

The election to vote on acceptance of that resolution was held on October 19, 1938. (R. 309.)

And the proposition voted on was whether the R.F.C. resolution of May 20, 1938 should be accepted. (R. 311.)

Now California law required that election as a condition of accepting the loan from the R.F.C. Section 11 was added in 1933 to the State Borrowing Act of 1917. Said new section permitted contracting with the R.F.C. to refund a District's debts. *It was always the law that a District could refund its bonds through agreement between itself and its bondholders.* The new section with respect to a loan from the R.F.C. read:

> "As evidence of such loan or loans and the obligations of such district to repay the same to the United States or any agency thereof, any irrigation district, upon being authorized so to do as provided by section 3 of this act as hereinafter in this section modified, may make and enter into contract or contracts with the United States or any agency thereof, as a condition or requirement to the making of such loan or loans."
>
> Cal. Stats. 1933, p. 2395.

Section 3 of the said Act of 1917, referred to in new Section 11, required that any contract made with the R.F.C. to provide funds for works must be approved by an election.

Cal. Stats. 1917, p. 243.

The written contract of *October 31, 1938* (after the election of October 19, 1938) to sell the 4 per cent

bonds to the R.F.C. did not say that the R.F.C. must receive all the issue or nothing. Certainly no such contract was ever voted. The contract states:

> "3. Amounts of Bonds to Be Purchased: R.F.C. shall be *under no obligation to purchase refunding bonds beyond the amount necessary, in its judgment for refunding* the indebtedness owed to creditors of the Borrower who join in the plan of refinancing, contemplated in a resolution of R.F.C. authorizing this loan and adopted May 20, 1938. *In the event any of the refunding bonds are sold to purchasers other than R.F.C., the principal amount of bonds which R.F.C. is obligated to purchase, shall be correspondingly reduced.*" (R. 285, 286.)

So petitioners are to be penalized for contesting.

We are concerned with a bankruptcy act of Congress. Any attempt by contract to weave into the remedy of Section 83 something that is not permitted is invalid. If the *Merced* case means the contrary, it is plain error. Its language might be appropriate in a specific performance case, but the truth is the statement made in the case as to what the contract was is unwarranted. Nor could the contract claimed be binding in bankruptcy.

The *City of Avon Park* case means that when this petition was filed the R.F.C. was not qualified to coerce the dissenting bondholders into this plan if it had rights which would make it more willing to give its consent. It is obvious that it did have such rights if it could call for bonds and the dissenting bondholders could not. It was no more impartial than was

the assenting creditor in the *City of Avon Park* case or the assenting landowner who held bonds of the District in the following case, in which an improvement district's bonded debt was to be reduced by the plan of composition.

Kauffman County Levee Imp. Dist. No. 4 v. Mitchell, 116 Fed. (2d) 959.

In the *City of Avon Park* case R. E. Crummer & Co., called Crummer, acting as fiscal agent of a city, solicited the two-thirds consent to a plan. The plan revealed that Crummer was to have from bondholders a minimum fee of $20.00 a bond and that if the fee was the minimum he might receive more for the coupons of the bonds than was to be paid the depositor. The flat fee was $40.00 per bond if there was no contingent compensation. But Crummer had bought up bonds and he proceeded to buy up bonds at distress prices and he did not disclose his prospective profit on these bonds to those solicited to deposit. Crummer's consent was necessary to a two-thirds consent. The Court held the plan was not fair and that it was not accepted in good faith. It treated Crummer's hidden advantage as virtually a part of the entire transaction. On fairness the Court said:

> "Beyond that is the question of unfair discrimination to which we have adverted. Compositions under chap. IX, like compositions under the old sec. 12, envisage equality of treatment of creditors. Under that section and its antecedents, a composition would not be confirmed where one creditor was obtaining some special favor or inducement not accorded the others, whether that con-

sideration moved from the debtor or from another. Re Sawyer (DC) 2 Low. Dec. 475, Fed. Cas. No. 12,395; Re Weintrob (DC) 240 F. 532, 39 Am. Bankr. Rep. 407; Re M. & M. Gordon (DC) 245 F. 905, 40 Am. Bankr. Rep. 301. As stated by Judge Lowell in Re Sawyer, supra, 'If a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote.' That rule of compositions is but part of the general rule of 'equality between creditors' (Clarke v. Rogers, 228 U. S. 534, 548, 57 L. ed. 953, 959, 33 S. Ct. 587, 30 Am. Bankr. Rep. 39) applicable in all bankruptcy proceedings. That principle has been imbedded by Congress in chap. IX by the express provision against unfair discrimination. That principle as applied to this case necessitates a reversal. In absence of a finding that the aggregate emoluments receivable by the Crummer interests were reasonable, measured by the services rendered, it cannot be said that the consideration accruing to them, under or as a consequence of the adoption of the plan, likewise accrued to all other creditors of the same class."

American United Mut. L. Ins. Co. v. Avon Park, 311 U. S. 138, 147, 148, 85 L. ed. 91, 96.

The Court stated that a Bankruptcy Court was a Court of Equity, that it ignored any subtle arrangement that involved unfairness. We stand here on the simple proposition that the whole profit the R.F.C. was entitled to make out of its bargain was the 4% interest which it received on its advances. It was paid its interest up to January 1, 1939. (R. 160.)

It presented its bills on a semi-annual basis and it had sent in its bill for the period from January 1, 1939 to July 1, 1939 when the case was tried. This second bill was for $12,583.48. (R. 361 to 363.)

What it could get beyond that was subject to Section 83.

All that we are arguing for is this: That this Court shall make this great corporation stand by what it elected to become when it consented to this plan and forced our clients to sacrifice their bonds at a hideous discount. For six years the District paid nothing and then was given the 61% settlement.

There must be kept out of this case any theory that because the plan contemplated "4 per cent bonds", the R.F.C.'s rights were different. This feature of similarity did not give the R.F.C. the right to all the bonds. The plan might have provided for a 7 per cent issue. The plan had to stand the test of Section 83.

Not only does Section 83 of the Bankruptcy Act prohibit discrimination but California law has, ever since 1917, placed all bonds of an Irrigation District on the same plane and it is the final ruling of the Courts in California that in case a District becomes unable to pay its bonded indebtedness all of its indebtedness must be treated as matured as in bankruptcy and its assets must be shared pro rata. This was definitely ruled in the following case:

Clough v. Baber, 38 Cal. App. (2d) 50, 100 Pac. (2d) 519. (Hearing denied by Supreme Court.)

The theory of the *Bekins* case was that Section 83 was valid because it did not interfere with state law at all. (*U. S. v. Bekins,* 304 U. S. 27, 82 L. ed. 1137.)

When Section 80 of the Bankruptcy Act was invalidated in the *Cameron County Improvement District* case California passed a state bankruptcy act which said a District could present a plan of composition to a state Superior Court and if the Court found the plan fair and equitable and the bondholder refused to accept it, the District could condemn his bonds at market value. All creditors were made parties.

Cal. Stats. 1937, p. 1876.

Counsel for this Irrigation District represented South San Joaquin Irrigation District. They proceeded for such District to present a plan consented to in writing by the R.F.C. under a loan resolution which contained the words of the one before the Court. That resolution was for the purposes of state law treated as putting in the R.F.C. such title to the bonds taken up as enabled it to give the required two-thirds consent. Admitting that under that resolution and under that law the plan to be fair must allow the dissenting bondholder the new bonds if the R.F.C. was to get bonds under the plan for those it had taken up in the precise manner involved in this case, the state Court petition read:

> "Petitioner further proposes, in its plan of readjustment of its outstanding bonded indebtedness, to issue to all holders of outstanding bonds of petitioner who have not deposited, or made available, their said bonds for retirement and

> liquidation for the cash offer hereinabove proposed, new bonds in the principal sum of $684.69, for each $1000.00 outstanding bond, bearing interest at the rate of four (4) per cent per annum, which said new bonds shall be identical in respective principal amount, interest rate, maturities, and in all other respects as the bonds that are to be issued to the United States Government, through the Reconstruction Finance Corporation, by petitioner under the terms of the loan hereinabove referred to granted by the Reconstruction Finance Corporation to petitioner."

Such counsel appeared as attorneys for the R.F.C. in the case. It is now claimed that this was a species of inadvertence. If it represented no mental process, accident strangely conformed to fairness. It occurred in a three million dollar case. We ask not to travel outside this case, but that it is not fiction when we say the R.F.C. not only wants the 4% on its "loan" but profit out of the other handle of the deal—its right to consider its status that of the holder of the old bonds, one may note page 4 of the publication of proceedings of California Irrigation District Association where it is said:

> "All the irrigation district bonds held by the R.F.C. carry 4% interest and bond houses are buying them. During the past few months, the R.F.C. has sold all of Merced, Pescadero, Alpaugh, Corcoran, Citrus Heights and LaMesa, Lemon Grove & Spring Valley districts' 4% bonds, amounting to $10,871,768.00 *and all of them at a substantial premium,* and there are bond houses now seeking to purchase others."

By the bond purchase contract, those bonds conform to Sections 3 to 9 of the California Districts Securities Commission Act, so that they could be certified as legal investment for savings banks and trusts, the best security in the world. (R. bottom of page 388.)

Those sections required (Cal. Stats. 1931, pages 2264 to 2266) that in the security behind the bonds there should be an equity of 40% and the valuation was a depression valuation. We quote from Section 4:

> "No bond issue of any district shall be approved by certification as provided in this act which together with any other outstanding bonds of such district including bonds authorized but not sold exceeds sixty per centum of the aggregate value of the water, water rights, canals, reservoirs, reservoir sites, irrigation and power works and other property owned by the district or to be acquired or constructed with the proceeds of the bonds proposed to be issued by said district, and the reasonable value of the lands within the boundary of the district."
>
> Cal. Stats. 1931, p. 2265.

That entire equity, the old bondholders were compelled to unconditionally waive. It is not equality or justice to fatten the purse of the R.F.C. out of the misfortune of these private lenders who are losing over half their claims. When the great R.F.C. says: I must have bonds—all the bonds, it and not the dissenting bondholders plays the Shylock. The Court says: The vast number of your bonds does not make

you superior to the law. And when one looks back and says that by private contract many old bondholders sold for cash and others should not get more, unreasonable indeed is a ruling which concedes the vitality of the old bonds was not destroyed but were still "owned" and which requires that a dissenting bondholder must take something less for his bonds as a penalty for having insisted on a hearing, while another right is accorded to those bonds so still "owned" by the R.F.C.

Dated, Berkeley, California,
February 27, 1942.

Respectfully submitted,
J. R. McDONALD,
J. R. MASON,
MARY E. MORRIS,
Petitioners.

By W. COBURN COOK,
Attorney for Petitioners.

GEORGE CLARK,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this _____ day of February, 1942.

_____

_____

_____

_____

_____

Attorneys for Respondent.

[redacted]

[redacted]

[redacted]

J. R. McDONALD, [redacted]
MARY E. MORRIS,

vs.

SANTA CARBONA IRRIGATION DISTRICT,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

A. L. COWELL,

[redacted]

Counsel for Respondent.

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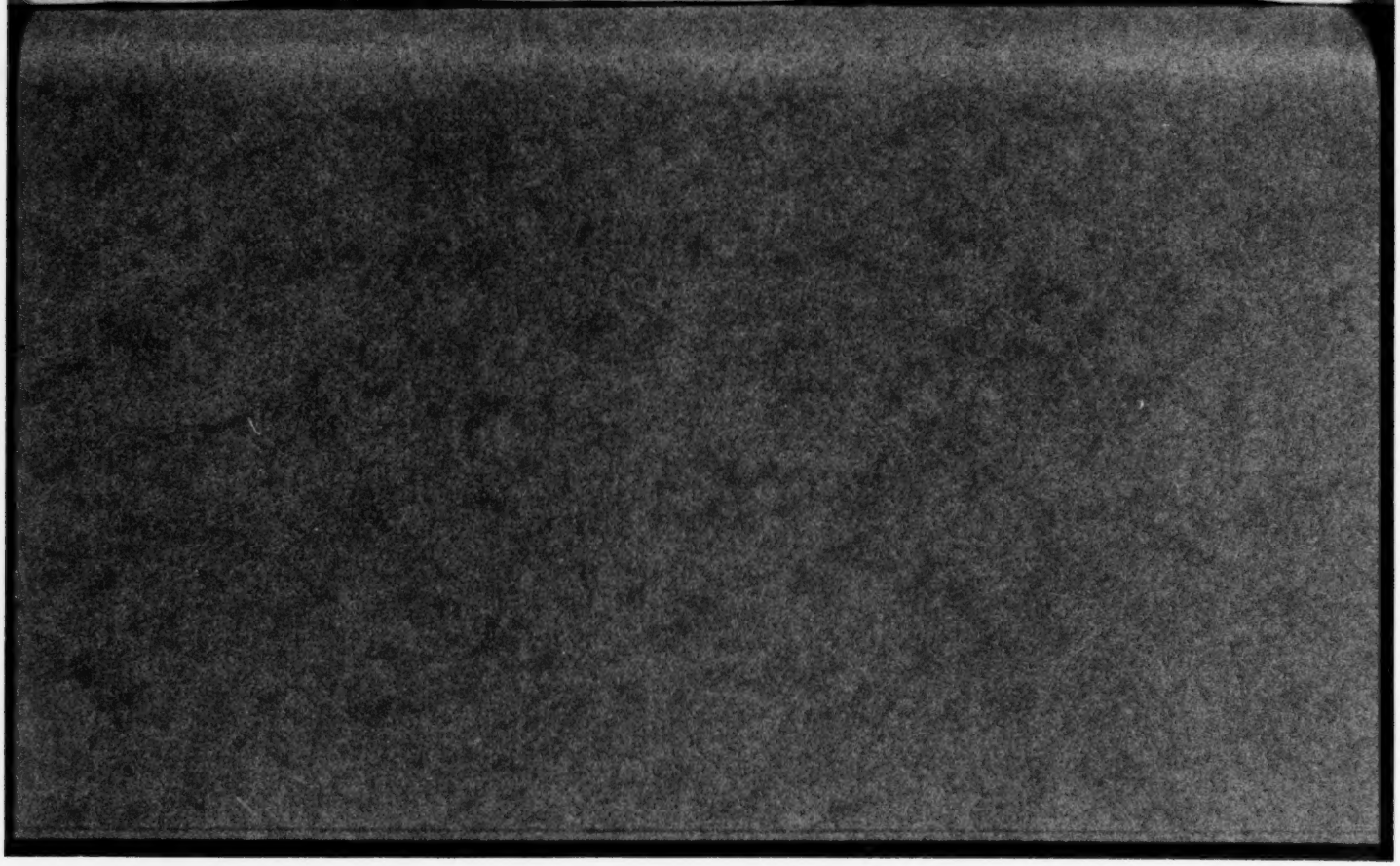

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Text

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1008

J. R. McDONALD, J. R. MASON and MARY E. MORRIS,
Petitioners,

vs.

BANTA CARBONA IRRIGATION DISTRICT,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE.

Petitioners state (Petition, p. 4):

"We are not inflicting on this Court a review of the evidence as to bankruptcy."

We assume, therefore, that the Finding that this District is insolvent and unable to meet its debts as they mature (R. 101) is not questioned.

Petitioners state further (Petition, p. 17):

> "We concede for the purpose of the case that the District stood menaced on January 1, 1939 with its entire bond debt and that as against petitioners the part of the debt bought up was 'owned' by the R.F.C."

This eliminates all argument relative to the status of the Reconstruction Finance Corporation (hereinafter called "R.F.C.") heretofore presented to this Court in petitions involving other California irrigation districts (*Citations infra*).

In the Petition, p. 12, and in Petitioners' brief, pp. 29-30, reference is made to a pleading by counsel for this District in an action involving the South San Joaquin Irrigation District brought pursuant to a California statute before the State Superior Court. There is not one word in the Record before this Court in this case of similar import. Furthermore, the matter of the debt composition proceedings of the South San Joaquin Irrigation District is now pending before the United States Circuit Court of Appeals for the Ninth Circuit, Proceeding No. 9788, and there is not one word of similar import in the record in that case as all counsel for Petitioners herein well know, inasmuch as they are also counsel for objecting bondholders in the South San Joaquin Irrigation District case.

In addition, the herein utterly immaterial State Court Petition quoted from itself completely nullifies the quoted language because in said Petition it is specifically provided, and the relief sought is, that all of that district's new refunding bonds be delivered to the R.F.C. and that objecting bondholders be given only the cash value fixed for their bonds pursuant to condemnation thereof as provided for in the State Act in question (Calif. Stats. 1937, Chap. 24, p. 92). It is evident, therefore, that Petitioners are not only going outside the Record before this Court in this case but are furthermore desperately grasping for a broken straw.

THE ISSUE.

The sole issue presented, stated briefly, is that the plan is unfair because the R.F.C. will get bonds while objecting bondholders will get cash (Petition, pp. 8-9).

ARGUMENT.

The Circuit Court in its opinion (*McDonald, et al. v. Banta Carbona Irrigation District* (1941, CCA 9), 123 Fed. 2d 968, 969) Record 386, 388, said:

> "The arrangement here made between the district and the Reconstruction Finance Corporation differs in no material respect from those arrangements thought unobjectionable in the Merced case and in Newhouse v. Corcoran Irrig. Dist., 9 Cir.,

114 F. 2d 690 and Bekins et al. v. Lindsay-Strathmore Irrig. Dist., 9 Cir., 114 F. 2d 680."

The three cases noted by the Circuit Court, and two others, all involving California irrigation districts before said Circuit Court, have all been before this Court. One, or the other, or both, of counsel for Petitioners herein represented Petitioners in each of said cases before this Court. They are:

West Coast Life Insurance Company, et al. v. Merced Irrigation District, 114 Fed. 2d 654 (1940, CCA 9); cert. den. (January 6, 1941) (*Pacific National Bank of San Francisco v. Merced Irrigation District*), 311 U.S. 718; rehearing den. (February 10, 1941) 312 U.S. 714;

Bekins, et al. v. Lindsay-Strathmore Irrigation District, 114 Fed. 2d 680 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693; rehearing den. (March 17, 1941) 312 U.S. 716;

Moody, et al. v. James Irrigation District, 114 Fed. 2d 685 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693;

Newhouse, et al. v. Corcoran Irrigation District, 114 Fed. 2d 690 (1940, CCA 9); cert. den. (January 6, 1941) 311 U.S. 717; rehearing den. (February 10, 1941) 312 U.S. 714;

Jordan, et al. v. Palo Verde Irrigation District, 114 Fed. 2d 691 (1940, CCA 9); cert. den. (February 17, 1941) 312 U.S. 693; rehearing den. (March 17, 1941) 312 U.S. 716.

Petitioners' principal authority, *American United Mutual Life Insurance Company v. City of Avon Park, Florida,* 311 U.S. 138, decided by this Court November 25, 1940, preceded consideration by this Court of each of the above cases. Their other authority, *Kaufman County Levee Improvement Dist. No. 4 v. Mitchell, et al.* (CCA 5), 116 Fed. 2d 959, was decided January 7, 1941, which also precedes final disposition by this Court of each of the above cases. Only a cursory review of the facts of Petitioners' aforesaid authorities reveals their inapplicability here. None of the admittedly unfair and objectionable features present in those cases exists in this case. Petitioners are mistaken (Petitioners' brief, p. 22) in the statement that the *City of Avon Park* case was not considered by this Court in the *Merced Irrigation District* case, and related cases from the same Circuit Court pending before this Court at about the same time. Said case is cited and differentiated at page 10 of the brief of Stephen W. Downey, Esq., counsel for Merced Irrigation District, dated December 9, 1940 and filed in opposition to petition for writ of certiorari, *Merced* case, Proceeding No. 591 before this Court.

The loan resolution in this case is Exhibit 9, R. 245-271, R. 138. The bond purchase contract is Exhibit 16, R. 280-293, R. 141-142. This Court has before it the records in the other California irrigation district cases, above noted, which records reveal that the corresponding documents in those cases are substantially similar to said documents in this case. Compare, for example, the loan resolution and bond purchase

contract in the *Corcoran Irrigation District* case, Proceeding No. 589 before this Court, which coincidentally bear the same exhibit numbers in that case as in the instant case, and are respectively Exhibit No. 9, R. 163, et seq., and Exhibit No. 16, R. 213, et seq., of the record in the *Corcoran Irrigation District* case.

A further examination of the record in said *Corcoran* case, pp. 354-355, reveals that in the Appellants' Statement of Points Relied On On Appeal, Points 12 and 15 raise the same questions presented here, to wit, that there is no proof that the value of what the plan offers to the dissenting bondholders equals the value of what is offered to the R.F.C. and that the plan is unfair and discriminatory because it contemplates issuing to the R.F.C. refunding bonds equal to the amount of its advances while giving to the dissenting bondholders only cash.

In the *Merced Irrigation District* case, 114 Fed. 2d 654, the Circuit Court at page 658 quotes from paragraph 5 (c) of the loan resolution. Identical language is contained in paragraph 5 (c) of the same resolution in this case (R. 258). Further in said *Merced* case, at page 666, the Court quotes from the bond purchase contract dated September 16, 1936. Identical language appears in the bond purchase contract in this case (R. 282-283). Obviously it is only reasonable that the procedure in all of these cases involving the refinancing of districts of the same nature by the R.F.C. should be thus uniform.

The complete answer to the sole issue presented is given by the Circuit Court in the *Merced Irrigation District* case at page 677 of 114 Fed. 2d as follows:

"The first contention is as follows: 'Assuming that R.F.C. is a creditor of the same standing as the appellants, the plan is unfair because it offers a 4% bond to the R.F.C., but denies a like privilege to the appellants.'

"Appellants misconstrue the plan and the relationship existing between the District and R.F.C. As we heretofore said, R.F.C. agreed to furnish money to the District to refinance its entire bonded debt at $515.01 for each $1,000 bond. The obligation assumed by R.F.C. was subject to the condition that all old securities should be purchased and held by R.F.C. until R.F.C. was satisfied that refinancing was complete. During this time, the old securities were to be kept alive and outstanding. When the refinancing was complete, then and then only was R.F.C. under the duty of buying and accepting refunding bonds, and surrendering the old securities for cancellation . . .

"In the present case R.F.C. has contracted to furnish the money necessary to make the composition effective, and to accept in turn refunding bonds at 4% for the amount of its advance. As holder of the old securities it is treated exactly as are all other bondholders—it will receive 51.501¢ on the dollar."

See also *Lindsay-Strathmore Irrigation District* case, 114 Fed. 2d 680 at page 684, and this District's resolution adopting the plan (R. 10-19).

This District, duly organized pursuant to the provisions of the California Irrigation District Act (Calif. Stats. 1897, Chap. 189, p. 254, as amended; Deering's General Laws, Act 3854), is a taxing agency

seeking composition of its indebtedness pursuant to Chapter IX of the Bankruptcy Act of 1898, as amended (11 U.S.C.A. Secs. 401-404). Chapter IX is a composition statute (*United States v. Bekins* (1938), 304 U.S. 27). The applicable principles are noted in the cited case and in the following decisions by this Court:

Cumberland Glass Mfg. Co. v. DeWitt (1915), 237 U.S. 447, 453;

Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Company (1924), 265 U.S. 269, 271;

Myers v. International Trust Co. (1927), 273 U.S. 380, 383;

Louisville Joint Stock Land Bank v. Radford (1935), 295 U.S. 555, 585.

See also Footnote 14, page 119, of *Case v. Los Angeles Lumber Products Co.* (1939), 308 U.S. 106.

The directors of a California irrigation district have the general power to make and execute all necessary contracts and to issue refunding bonds (Sec. 15 and Secs. 32a, 32b, 32c, 32d and 32e, California Irrigation District Act, Calif. Stats. 1897, Chap. 189, p. 254, as amended; Deering's General Laws, Act 3854). In addition, they have specific statutory authority to cooperate and contract with the United States, or any agency thereof, to borrow or procure money for the purpose of financing or refinancing the obligations of the District. In this regard, they may perform all acts and enter into any contracts that may be necessary, including the issuance of bonds (Calif. Stats. 1917, Chap. 160, p. 243, as amended; Deering's

General Laws, Act 3873). (See particularly Section 11 added by Calif. Stats. 1933, Chap. 918, p. 2395, as amended).

The R.F.C., a corporation created by Act of Congress of the United States, is authorized to exercise general corporate powers and has power "to make contracts" (15 U.S.C.A. Sec. 604). By the express provisions of Section 36 of the Emergency Farm Mortgage Act of 1933, as amended, (43 U.S.C.A. Sec. 403), the R.F.C. has the power to make loans to reduce and refinance outstanding indebtedness to or for the benefit of, among others, irrigation districts, and such loans may be made through the purchase of securities issued or to be issued by such Districts. Throughout all of the documents adopted or executed by the District or the R.F.C. in the proceedings in this case, wherever appropriate, reference is constantly made to the foregoing statutes so that anyone examining or following the proceedings would be fully advised at all times of the authority pursuant to which action was being taken.

The off-the-record observation (Petitioners' brief, p. 30) relative to the sale by the R.F.C. of its bonds of other irrigation districts at a premium, besides being immaterial, is no proof whatsoever that the new bonds of this District can be sold at a premium.

The reference to the California statute (The California Districts Securities Commission Act, Calif. Stats. 1931, Chap. 1073, p. 2263, as amended; Deering's General Laws, Act 3857a), relative to the security behind the bonds to be issued (Petitioners' brief, p. 31), simply calls to the attention of this Court that

the new bonds issued or to be issued by all of the other California irrigation districts whose plans of composition have already been passed upon by this Court were issued or are to be issued pursuant to the same statute. The quoted portion of the statute refers to the value of the taxing agency's water, water rights, canals, reservoirs, reservoir sites, irrigation and power works, and other property owned by the taxing agency. But the capacity of the debtor taxing agency to pay is measured by its ability to levy and collect such taxes as the land owners therein are able to pay. While the operative assets of the District and the land therein are of "evidentiary value" on the question of ability to pay, they are not determinative of the issue. The District cannot tax its own works and properties, and hence in the tax producing sense they have no value.

"Since the 'assets' of a taxing district consist of the indefinite power to levy taxes, rather than any specific tangible property, there could be little use, of course, for the filing of any schedule corresponding to Schedule B of assets of the ordinary bankrupt." (Remington on Bankruptcy, 1939, Vol. 10, Sec. 4352, p. 245, in his chapter on "Composition of Taxing Agencies").

In the brief of Stephen W. Downey, Esq., *supra*, dated December 9, 1940, Proceeding No. 591 before this Court, *Merced* case, at pages 8-9, it was pointed out that "Failure to find value of District assets" and "Failure to find value of landowners' property" were *not* error. Assessed valuation of land in the District (Exhibit 31, R. 331, R. 151; Exhibit 32, R. 333, R. 152) and cost of District assets less depreciation (Exhibit

46, R. 352, R. 181) are fully set forth in the Record. The District assesses the land for its taxing purposes more than twice what it is assessed for by the County (R. 197).

None of the suggested reasons for the exercise of this Court's discretion in granting a review on writ of certiorari stated in Its Rule 38 exists in the instant case. As stated by Mr. Chief Justice Taft in *Magnum Import Co. v. Coty* (1923), 262 U.S. 159, 163:

> "The jurisdiction to bring up cases by certiorari from the circuit courts of appeals was given for two purposes: first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing."

The Petition should be denied.

Dated, Stockton, California,
March 31, 1942.

Respectfully submitted,
A. L. COWELL,
Counsel for Respondent.

RUTHERFORD, JACOBS, CAVALERO & DIETRICH,
NEWTON RUTHERFORD,
D. R. JACOBS,
PHILIP CAVALERO,
STEPHEN DIETRICH,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this _____ day of March, 1942.

_____

_____

Counsel for Petitioner.